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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)
)
US West Communications, Inc. Petition)
for Declaratory Ruling Regarding the)
Provision of National Directory Assistance)

CC Docket No. 97-172

COMMENTS

MCI TELECOMMUNICATIONS CORPORATION

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COMMENTS

MCI Telecommunications Corporation ("MCI"), pursuant to a Public Notice (DA 97-1634) issued by the Federal Communications Commission (the "Commission"), hereby files its Comments regarding the above-referenced Petition for Declaratory Ruling by US West Communications, Inc. ("US West") filed in this docket regarding Bell Operating Company ("BOC") provision of National Directory Assistance. As explained below, the provision to callers of telephone numbers of subscribers in other LATAs is an interLATA service and is thus prohibited to the BOCs unless and until they obtain in-region interLATA authority.

I. BACKGROUND

On April 10, 1997, MCI filed a Complaint (the "Ameritech Complaint," File No. E-97-19) against the Ameritech Operating Companies (referred to collectively as "Ameritech") alleging violations of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the "Act"). In the Ameritech Complaint, MCI claimed, among other charges, that an Ameritech affiliate, Illinois Bell, provides National Directory Assistance in violation of Sections 201(b), 251, 252, 271 and 272 of the Act. By dialing 411, consumers in the region

served by Illinois Bell can obtain National Directory Assistance, receiving numbers of subscribers either inside or outside Ameritech's region. In addition, MCI alleged that Ameritech's National Directory Assistance constitutes an improper use of the 411 dialing code, in violation of the Commission's First Report and Order in its docket captioned Use of N11 Codes and Other Abbreviated Dialing Arrangements, CC Docket No. 92-105, FCC 97-51, (released February 19, 1997) ("N11 Order").

Believing that its interests might be jeopardized by any decision in the Ameritech Complaint, on June 3, 1997, US West filed a Motion to Intervene as a Party Defendant ("Motion to Intervene") in MCI's Complaint against Ameritech. In its Motion to Intervene, US West described the technical differences between its National Directory Assistance service and Ameritech's National Directory Assistance service, explaining that its National Directory Assistance service frequently involves interLATA calls.¹ Further, US West argued that because Ameritech stated in its Answer that the Ameritech National Directory Assistance service does not involve interLATA calls, a decision about National Directory Assistance based on Ameritech's particular technological configuration could be detrimental to US West's position. Following the Commission staff's decision that the Commission's rules do not contemplate such a Motion to Intervene, US West withdrew its Motion on June 9, 1997.

Following the withdrawal of its Motion to Intervene, US West filed the above-referenced

¹ See US West Motion to Intervene as a Party Defendant at 2, in which US West states that "[f]requently, when US West provides directory assistance (including National Directory Assistance), neither the operator service center nor the directory assistance data base are located in the same LATA as the customer seeking the telephone number [I]f [an] Albuquerque caller requests a number in Miami, Florida, the number will come from an operator and database located in Colorado Springs, Colorado, Waterloo, Iowa, or Duluth, Minnesota."

Petition for Declaratory Ruling Regarding the Provision of National Directory Assistance (“the Petition,” CC Docket No. 97-172) on July 17, 1997. In its Petition, US West requests that the Commission rule that a BOC’s provision of National Directory Assistance does not violate the Act or the Commission’s rules. Subsequently, the Commission issued a Public Notice (DA 97-1634) requesting comments from interested parties regarding US West’s Petition.

Following the filing of the Petition, but before it was put on public notice, MCI filed a Complaint (File No. E-97-40) against US West on July 28, 1997, alleging, among other charges, that US West’s provision of National Directory Assistance violates Sections 201(b), 251, 252, 271 and 272 of the Act. Further, MCI alleges in its Complaint that US West’s provision of National Directory Assistance violates the Commission’s N11 Order.

II. THE US WEST PETITION

By dialing 1+411, consumers in US West’s region can obtain National Directory Assistance, receiving numbers of subscribers in other LATAs, either inside or outside US West’s region. In its Petition, US West states that when a US West customer dials 1+411 to request a local number, the answering operator provides the local number. Further, if a US West customer dials 1+411 to request a number that is not local, the call is transferred to a different operator who has access to a database containing national numbers.

Moreover, as mentioned above in the discussion concerning US West’s Motion to Intervene, US West states that its National Directory Assistance service differs from Ameritech’s in that US West offers its National Directory Assistance from centralized locations. Thus, its

National Directory Assistance service frequently involves interLATA calls.² In its Petition, US West states that “a caller seeking a number, whether local or national, will frequently get that number from an operator in a different LATA,”³ as US West provides the transport to connect calling customers across LATA boundaries.

US West explains in its Motion to Intervene that it offers National Directory Assistance service via its standard directory assistance facilities, technologies and services. Further, US West states that its National Directory Assistance service is a “straightforward directory assistance service,” which does not offer call completion or “reverse search” capabilities.

III. DISCUSSION

In its Petition, US West states that “no provision of the Act prohibits a BOC from providing Directory Assistance, and no provision of the Act purports to limit the scope of the telephone numbers a BOC may provide to Directory Assistance customers.” While the Communications Act contains no specific reference to BOC provision of National Directory Assistance, the Act does function to prohibit BOC entry into in-region long distance services prior to receipt of Commission authority under Section 271.

The Telecommunications Act of 1996 is designed to open the local and long distance telephone markets to competition. In addition, the Act works to deregulate certain aspects of the telecommunications markets. Despite US West’s statements in its Petition, a central purpose of

² Id.

³ See US West Petition for Declaratory Ruling at 3.

the Act is to restrict BOC entry into the in-region interLATA market prior to a BOC's meeting the competitive checklist of Section 271. Only after meeting the checklist of Section 271 and receiving a grant of in-region interLATA authority from the Commission may a BOC provide and market in-region interLATA service.

While local directory assistance is clearly a local exchange service that may be provided by a BOC or any other local exchange carrier ("LEC"), interLATA directory assistance is an interLATA service to be provided by interexchange carriers ("IXCs"). The provision of interLATA directory assistance, as in the case of US West's National Directory Assistance, is an activity that comprises the business of providing long distance service; therefore, any BOC provision of National Directory Assistance prior to receipt of 271 approval from the Commission is offered in violation of Sections 201(b), 271 and 272 of the Act. Further, the BOCs' provision of National Directory Assistance through the use of 411 is offered in violation of the Commission's N11 Order.

A. US West's National Directory Assistance is an In-Region InterLATA Telecommunications Service

In its Petition, US West claims that its National Directory Assistance service is not an in-region interLATA telecommunications service. Further, US West states that "providing a telephone number -- any telephone number -- is not the transmission of information across a LATA boundary."⁴

It is not exactly clear why US West does not think that its National Directory Assistance

⁴ Id. at 7.

service or, more generally, that the provision of telephone numbers of subscribers in other LATAs, constitutes an interLATA telecommunications service. US West, in its Petition, cannot claim that National Directory Assistance service is not an in-region service. In fact, US West readily admits in both its Motion to Intervene and its Petition for Declaratory Ruling that the National Directory Assistance service in question is offered within the US West region. Accordingly, as US West describes the service as an in-region offering, National Directory Assistance is in-region.

Further, US West does not appear to claim that its National Directory Assistance service is not provided on an interLATA basis. To the contrary, US West explains the technical aspects of the service by detailing the interLATA transmissions that occur as a result of the centralized provision of such services.

As part of its argument that the provision of National Directory Assistance is not an interLATA service,⁵ US West states that a customer's use of a number received from US West directory assistance is irrelevant to the essential nature of directory assistance but then counters its own argument by correctly characterizing its National Directory Assistance service as "adjunct to basic," since its sole purpose is to enable subscribers to place calls.⁶ In particular, the purpose of National Directory Assistance is to enable callers to place interLATA calls. Moreover, if, as US West argues in its Petition, National Directory Assistance service is considered adjunct to basic, then it is a telecommunications service as that term is defined in

⁵ Id. at 5.

⁶ Id. at 10-12.

Section 3(46) of the Act.⁷

Thus, based on US West's arguments that its National Directory Assistance is adjunct to basic and its description of the interLATA transmissions involved in the provision of the service, it must be classified as an in-region interLATA telecommunications service.

B. BOC Provision of National Directory Assistance is not an Activity Previously Authorized under the MFJ

Given that US West's National Directory Assistance is an in-region interLATA telecommunications service, US West's only possible justification for providing the service rests on its claim under Section 271(f) of the Act that it has prior MFJ authorization to provide such service using interLATA transmissions. US West claims that the directory assistance authorization the BOCs received under the MFJ permits it to provide National Directory Assistance on a centralized basis.⁸ The MFJ authorization to which US West refers is limited in its scope. Contrary to US West's argument, the authorization in question permits BOCs to provide only "exchange telecommunications and exchange access functions,"⁹ including directory assistance service,¹⁰ on a centralized basis. Thus, the centralized provision of directory

⁷ See In the Matter of Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, As Amended, First Report and Order and Further Notice of Proposed Rulemaking, at para. 107, CC Docket No. 96-149, FCC 96-489, rel. December 24, 1996, ("Non-Accounting Safeguards Order"); on recon. 12 FCC Rcd. 2297 (1997); on further recon., Second Order on Reconsideration, FCC 97-222, rel. June 24, 1997.

⁸ See United States v. Western Elec. Co., 569 F. Supp. 1057, 1097-1101 (D.D.C. 1983).

⁹ Id. at 1100.

¹⁰ Id. at 1098.

assistance authorized under the MFJ was directory assistance related to the BOCs' "exchange telecommunications" functions, or local directory assistance service. Accordingly, the provision of numbers of subscribers in other LATAs has not been previously authorized and is not within the exceptions under Section 271(f) of the Act.

The narrowness of the MFJ authorization cited by US West as authority for its National Directory Assistance service is underscored by the rationale of that decision. Under the MFJ Plan of Reorganization and case law, local directory assistance, dialed by 411, was considered a permissible "official service" the BOCs could provide to their customers on an interLATA basis. Official Services are "services that represent communications between personnel or equipment of a Bell Operating Company located in various areas and communications between Operating Companies and their customers."¹¹ As such, local directory assistance -- the provision of telephone numbers of subscribers in the same LATA as the caller -- is an example of a permissible interLATA Official Service that could be provided under the MFJ without a waiver.¹² In order to achieve operational efficiencies, the BOCs deployed their Official Services networks to serve geographical areas which were generally larger than individual LATAs. The MFJ court ruled Official Services exempt from the interLATA ban in order to allow such

¹¹ Id. at 1097. There are four types of Official Service networks; the Operational Support System Network (used to monitor and control trunks and switches); the Information Processing Network (used to transmit data relating to customer trouble reports, service orders, etc.); Service Circuits (used for repair calls and directory assistance) and the Voice Communications Network (used by BOC employees for conduct of internal business).

¹² Id. at 1097, n. 175.

efficiencies.¹³ In the case of directory assistance, however, the centralized provision of such services that was allowed did not enlarge the scope of the service that could be rendered; only the numbers of subscribers in the same LATA as the caller could be provided in response to a request for directory assistance. That conclusion is highlighted by the MFJ Court's decision that 800 Service Directory Assistance should be assigned to AT&T because it is "an interexchange, inter-LATA service."¹⁴

In fact, US West itself was denied a broader MFJ waiver for in-bound directory assistance calls from other LATAs because IXCs can provide "interLATA directory assistance by using directory information provided by US West pursuant to its access tariffs."¹⁵ Moreover, when Bell Atlantic attempted to expand the scope of offerings falling under the Official Services designation, it was also rebuffed. The MFJ court held that Bell Atlantic's provision of directory assistance services to customers of independent LECs was not an Official Service and thus required a waiver.¹⁶ These decisions compel two conclusions: First, under the MFJ, US West and other BOCs would have needed a waiver to provide directory assistance to a caller where an

¹³ Id. at 1098.

¹⁴ Id. at 1102.

¹⁵ See United States v. Western Elec. Co., Civ. Action No. 82-0192 (D.D.C. October 30, 1984), slip op. at 4.

¹⁶ United States v. Western Elec. Co., Civ. Action No. 82-0192 (D.D.C. February 6, 1984); See also United States v. Western Elec. Co., 569 F. Supp. at 1097 (D.D.C. 1983) (reiterating, the court held that "'Official Services' are 'communications between personnel or equipment of an Operating Company located in various areas and communications between Operating Companies and their customers.'"); See also id. at 1102 (holding that "[i]t is abundantly clear . . . that this particular directory assistance is an interexchange, interLATA service which is appropriately assigned to AT&T.").

IXC could have provided that service, such as a request for the number of a subscriber in another LATA, irrespective of whether the operator providing the number is in the same LATA as the caller. Therefore, under MFJ precedent no provision of National Directory Assistance, including US West's National Directory Assistance service, would be classified as an Official Service exempt from the interLATA prohibition. Second, the BOCs were only authorized to provide local directory assistance on an interLATA basis, not National Directory Assistance.

The rationale for allowing the BOCs to retain and utilize interLATA Official Services facilities does not apply to the provision of a national directory assistance service. The MFJ court was concerned with efficiency losses associated with reconfiguring directory assistance systems that served a major portion of a state or at most an entire state,¹⁷ but not a directory assistance network that can retrieve telephone numbers nationally. Further, the Commission has explicitly stated that "Official Services" refer to "interLATA networks that are used to manage the operation of *local exchange services*" (emphasis added).¹⁸ US West's National Directory Assistance service does not relate to its operation of local exchange services; rather, National Directory Assistance is an adjunct to basic service only because it enables subscribers to make interLATA calls and thus relates to the provision of interLATA service, not local exchange service. Therefore, US West's National Directory Assistance service, and any other BOC National Directory Assistance service provided prior to in-region interLATA authority, is offered without prior authorization under the MFJ and thus in violation of Section 271 of the Act.

¹⁷ 569 F. Supp. at 1098.

¹⁸ See Non-Accounting Safeguards Order at n. 666.

C. The Telecommunications Act Prohibits BOCs from more than the Carrying of InterLATA Transmissions and thus Prohibits Any BOC Provision of National Directory Assistance Prior to Receipt of In-Region Authority

Moreover, any directory assistance service, no matter how it is configured, that provides telephone numbers of subscribers in other LATAs is an interLATA telecommunications service and thus may not be provided in-region by a BOC prior to Section 271 authority. As in the case of Ameritech's National Directory Assistance, which at this time does not involve interLATA transmissions between the callers and BOC operators, the provision of such service, which is a long distance service, should not be permitted prior to in-region authority.

In its Petition, US West argues that Sections 271(a) and (b) of the Act prohibit only BOC provision of "interLATA services." Further, US West states that, based on the Act's definitions, an interLATA service is "the interLATA transmission of information chosen by the user between or among points selected by the user."¹⁹ Based on an incomplete understanding of the Act's definitions, US West argues that simply providing telephone numbers to callers is not the provision of an interLATA transmission and, therefore, is not a prohibited BOC offering of an interLATA service.

US West's definition argument is incorrect in that the "provi[sion of] interLATA services" restricted under Section 271 encompasses more activities than simply the carrying of interLATA transmissions. For example, the provision of interLATA service clearly includes the marketing of such services. Section 272(g)(3) of the Act specifically authorizes BOC "joint marketing and sale" of local and interLATA services, which would not have been necessary if

¹⁹ See US West Petition at 7.

such joint marketing were not otherwise prohibited by Section 272(a)(2), requiring that various types of “interLATA . . . services” be provided through a separate affiliate. Since the provision of certain “interLATA . . . services” encompasses the marketing and sale thereof, the restriction in Section 271 on the provision of in-region “interLATA services” must include the marketing and sale thereof.

Since the provision of interLATA services encompasses more than simply the carrying of interLATA transmissions, the Commission will need to determine the full scope of the restriction in Section 271(a) of the Act by recourse to all the standard tools of statutory construction. One very helpful source is the case law construing the prior parallel MFJ bar against BOC provision of interLATA service, since Section 271 takes the place of the MFJ prohibition. US West argues that the MFJ definition of “telecommunications service” was much broader than the Act’s definition of “interLATA services,” rendering the MFJ precedents inapplicable. As explained above, however, the provision of “interLATA services” under the Act is much broader than US West recognizes, and encompasses other activities necessary for the carrying of a call across LATA boundaries, such as the marketing of such services or, for that matter, providing the telephone numbers that enable subscribers to place interLATA calls.

Under the MFJ, activities that comprise the business of providing long distance service -- e.g., interLATA 800 directory assistance -- were considered interLATA telecommunications services, whether or not they involved interLATA transmissions,²⁰ and the same should hold true

²⁰ See U.S. v. Western Elec. Co., 627 F. Supp. at 1100, 1102, appeal dismissed, 797 F.2d 1082 (D.C. Cir. 1986) (stating that BOCs cannot engage “activities that comprise the business of providing interexchange services” -- that is, “the performance of functions that are normally and necessarily performed by those who are engaged in that business”).

in applying Section 271. In the instance of National Directory Assistance, because IXC's provide long distance directory assistance and BOC's must provide the information that permits IXC's to provide long distance directory assistance, BOC's would be competing with IXC's for the provision of long distance directory assistance. Thus, any provision of the telephone numbers of subscribers in other LATAs constitutes an interLATA service under Section 271 of the Act.

D. US West's Use of the 411 Dialing Code for National Directory Assistance Violates the Commission's N11 Order

In the First Report and Order in its docket captioned Use of N11 Codes and Other Abbreviated Dialing Arrangements, CC Docket No. 92-105, FCC 97-51, at para. 47 (released February 19, 1997) (N11 Order), the Commission clearly concluded that 411 should only be used for local directory assistance.²¹ The Commission was unequivocal that traditional directory assistance was limited to operator provision of local telephone numbers.²² Accordingly, US West's provision of telephone numbers, via 411, from distant LATAs violates the N11 Order's determination of what constitutes a permissible use of a 411 number. This violation of the N11 Order also constitutes an unreasonable practice under 201(b), since other IXC's cannot offer National Directory Assistance using a 411 access code.

US West points out that Ameritech has sought reconsideration on the issue of whether 411 should be restricted to local directory assistance, arguing that the rationale of the N11 Order

²¹ See N11 Order at para. 47 (stating that "[l]ike 911 for access to emergency services, 411 has long been assigned for access to local directory assistance services . . . Accordingly, as we proposed in the N11 NPRM, we do not alter the assignment of the 411 code.").

²² Id., at para. 48, n. 170.

was simply to restrict 411 to basic services, rather than enhanced, and that the local or long distance nature of a directory assistance call has nothing to do with the basic/enhanced dichotomy. It may be correct that the local or long distance nature of a call is irrelevant to the basic/enhanced distinction, but 411 should still be restricted to local directory assistance for similar competitive considerations. Just as BOCs may not use the 411 code for enhanced services unless they make that code available to other enhanced service providers, they should not be allowed to use it for interLATA services, such as the provision of long distance directory assistance, unless it is made available to other IXC. Other IXCs will be disadvantaged by the BOCs' exclusive use of 411 for services that compete with the IXCs in the same way that enhanced service providers would be disadvantaged by the BOCs' exclusive use of 411 for enhanced services. Further, unless and until the Commission's N11 Order is modified as Ameritech requested in its reconsideration petition, US West must comply with its requirements.

IV. CONCLUSION

US West admits that its National Directory Assistance service is offered within the US West region and that interLATA transmissions are involved in the provision of the service. Moreover, by US West's own argument that such service should be categorized as adjunct to basic, the US West National Directory Assistance service must be viewed as a regulated telecommunications service. Thus, US West's National Directory Assistance is an in-region interLATA telecommunications service covered by the restrictions in Section 271 of the Act.

Although US West argues that Section 271(f) of the Act permits it to provide National Directory Assistance as an activity previously authorized under the MFJ, that authorization only

BOCs to provide *local* directory assistance on a centralized basis. US West is mistaken in its attempt to categorize National Directory Assistance as an "official service." Thus, US West's provision of National Directory Assistance is not authorized under Section 271(f) of the Act.

No matter how National Directory Assistance is provisioned, no BOC should be permitted to offer such service prior to receipt of in-region interLATA authority from the Commission. The provision of interLATA services encompasses more than simply the carrying of interLATA transmissions. Because National Directory Assistance is essentially a long distance service, BOCs must not be permitted to compete with IXC's for the provision of long distance directory assistance.

As an additional violation, US West provides National Directory Assistance via the 411 access number in violation of the Commission's N11 Order. The Commission has determined that the 411 access number should be used only for local directory assistance.

Thus, only after meeting the checklist of Section 271 and receiving a grant of in-region interLATA authority from the Commission may a BOC provide in-region interLATA service. Accordingly, US West and all other BOCs should be prohibited from providing National Directory Assistance unless, and until, they receive such authority.

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CERTIFICATE OF SERVICE

I, R. Dale Dixon, Jr., hereby certify that a true copy of the foregoing "COMMENTS" was served this 2nd day of September, 1997, by hand delivery upon each of the following persons:

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